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*Attorneys for Claimant*  
*FGLS Equity LLC*

Hearing Date: November 28, 2018

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

SECURITIES INVESTOR PROTECTION  
CORPORATION,

Adv. Pro. No. 08-01789 (SMB)

Plaintiff-Applicant,

SIPA LIQUIDATION

v.

(Substantively Consolidated)

BERNARD L. MADOFF INVESTMENT  
SECURITIES LLC,

Defendant.

In re:

BERNARD L. MADOFF,

Debtor.

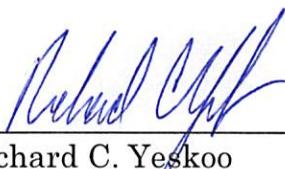
**AFFIRMATION OF RICHARD C. YESKOO**

Richard C. Yeskoo, an attorney duly admitted to practice law in the State of New York, affirms under penalty of perjury as follows:

1. Annexed hereto as Exhibit 1 is the Trustee's determination of FGLS's Customer Claim.

2. Annexed hereto as Exhibit 2 is FGLS's objection to the Trustee's determination.

Dated: November 3, 2018

  
Richard C. Yeskoo



## **EXHIBIT 1**

**BERNARD L. MADOFF INVESTMENT SECURITIES LLC**

**In Liquidation**

**DECEMBER 11, 2008<sup>1</sup>**

**NOTICE OF TRUSTEE'S DETERMINATION OF CLAIM**

October 7, 2015

FGLS Equity LLC  
c/o Steve Mendelow  
Citrin Cooperman  
529 Fifth Avenue  
New York, New York 10017

Dear FGLS Equity LLC:

**PLEASE READ THIS NOTICE CAREFULLY.**

The liquidation of the business of BERNARD L. MADOFF INVESTMENT SECURITIES LLC ("BLMIS") is being conducted by Irving H. Picard, Trustee under the Securities Investor Protection Act, 15 U.S.C. § 78aaa *et seq.* ("SIPA"), pursuant to an order entered on December 15, 2008 by the United States District Court for the Southern District of New York.

The Trustee has made the following determination regarding your claim on BLMIS Account No. 1F0178, designated as Claim No. 011505:

Your claim for securities is **DENIED**. No securities were ever purchased for your account.

Your claim is **ALLOWED** for \$3,450,000.00 which was the balance in your BLMIS Account on the Filing Date based on the amount of money you deposited with BLMIS for the purchase of securities, less subsequent withdrawals, as outlined in Table 1 attached hereto.

Your **ALLOWED CLAIM** of \$3,450,000.00 will be satisfied in the following manner:

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<sup>1</sup> Section 78*lll*(7)(B) of SIPA states that the filing date is "the date on which an application for a protective decree is filed under 78eee(a)(3)," except where the debtor is the subject of a proceeding pending before a United States court "in which a receiver, trustee, or liquidator for such debtor has been appointed and such proceeding was commenced before the date on which such application was filed, the term 'filing date' means the date on which such proceeding was commenced." Section 78*lll*(7)(B). Thus, even though the Application for a protective decree was filed on December 15, 2008, the Filing Date in this action is on December 11, 2008.



The enclosed **PARTIAL ASSIGNMENT AND RELEASE** must be executed, notarized and returned in the envelope provided herewith. Upon receipt of the executed and notarized **PARTIAL ASSIGNMENT AND RELEASE**, the Trustee will partially satisfy your **ALLOWED CLAIM** by sending you a check in the amount of \$500,000.00, with the funds being advanced by Securities Investor Protection Corporation pursuant to section 78fff-3(a)(1) of SIPA. At this time, you are entitled to \$1,683,669.00 (based on 48.802% of your allowed claim) for catch-up distributions the Trustee previously has made. You will also be entitled to additional distributions, if any are made by the Trustee.

**PLEASE TAKE NOTICE:** You did not previously receive a determination letter because your claim was temporarily disallowed pursuant to Bankruptcy Code Section 502(d) in connection with an adversary proceeding pending against you. As a result of the dismissal of the adversary proceeding against you, your claim is now being determined pursuant to this Notice of Trustee's Determination of Claim.

**PLEASE TAKE NOTICE:** If you disagree with this determination and desire a hearing before Bankruptcy Judge Stuart M. Bernstein, you **MUST** file your written opposition, setting forth the grounds for your disagreement, referencing Bankruptcy Case No. 08-1789 (SMB) and attaching copies of any documents in support of your position, with the United States Bankruptcy Court and the Trustee within **THIRTY DAYS** after October 7, 2015, the date on which the Trustee mailed this notice.

**PLEASE TAKE FURTHER NOTICE:** If you do not properly and timely file a written opposition, the Trustee's determination with respect to your claim will be deemed confirmed by the Court and binding on you.

**PLEASE TAKE FURTHER NOTICE:** If you properly and timely file a written opposition, a hearing date for this controversy will be obtained by the Trustee and you will be notified of that hearing date. Your failure to appear personally or through counsel at such hearing will result in the Trustee's determination with respect to your claim being confirmed by the Court and binding on you.

Want to know more about the new features in the latest version of the software? Check out the [release notes](#) for more information.

and a general dissatisfaction with the political and economic policies of the USSR, and the influence of capitalist and bourgeois ideas on the people. The government has taken steps to improve the situation, including the introduction of a new constitution, the establishment of a new government, and the implementation of a new economic policy.

And, I suppose, a woman like myself, though not in the same degree, would be equally well qualified to judge of the fitness of a man for a husband.

3. *Allochrysa* nov. sp. (fig. 10) from western and central Costa Rica. A small, slender, elongate fly with a dark brown body and a pale yellowish-green thorax. The head is dark brown with a pale yellowish-green vertex. The thorax is pale yellowish-green with dark brown stripes on the mesonotum and a dark brown stripe on the metanotum. The legs are pale yellowish-green with dark brown stripes. The wings are transparent with dark brown veins. The abdomen is pale yellowish-green with dark brown stripes. The male genitalia are not well developed.

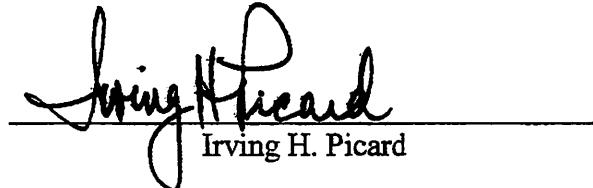
and developed in the early stages of the disease. The first evidence of the disease is often a slight increase in the number of the normal white blood cells, and in the later stages a marked increase in the number of the abnormal lymphocytes.

**PLEASE TAKE FURTHER NOTICE:** You must mail your opposition, if any, in accordance with the above procedure, to each of the following addresses:

Clerk of the United States Bankruptcy Court for  
the Southern District of New York  
One Bowling Green  
New York, New York 10004

and

Irving H. Picard, Trustee  
c/o Baker & Hostetler LLP  
45 Rockefeller Plaza  
New York, New York 10111



Irving H. Picard

Trustee for the Liquidation of the Business of  
Bernard L. Madoff Investment Securities LLC

cc: Marc Bogatin, Esq.  
Attorney at Law  
277 Broadway, Suite 900  
New York, New York 10007



DEPOSITS			
DATE	TRANSACTION DESCRIPTION	AMOUNT	ADJUSTED AMOUNT
11/1/2002	TRANS FROM 1ZA54230	\$3,149,075.00	\$0.00
1/3/2003	CHECK	\$95,000.00	\$95,000.00
3/6/2003	CHECK	\$300,000.00	\$300,000.00
4/9/2003	CHECK	\$40,000.00	\$40,000.00
4/23/2003	CHECK	\$40,000.00	\$40,000.00
5/9/2003	CHECK	\$20,000.00	\$20,000.00
6/5/2003	CHECK	\$90,000.00	\$90,000.00
6/10/2003	CHECK	\$200,000.00	\$200,000.00
7/21/2003	CHECK	\$500,000.00	\$500,000.00
7/31/2003	CHECK	\$300,000.00	\$300,000.00
8/12/2003	CHECK	\$185,000.00	\$185,000.00
9/12/2003	CHECK	\$500,000.00	\$500,000.00
9/23/2003	CHECK	\$525,000.00	\$525,000.00
10/14/2003	CHECK	\$170,000.00	\$170,000.00
11/6/2003	CHECK	\$200,000.00	\$200,000.00
11/26/2003	CHECK	\$615,000.00	\$615,000.00
12/5/2003	CHECK	\$270,000.00	\$270,000.00
3/29/2004	CHECK	\$230,000.00	\$230,000.00
4/21/2004	CHECK	\$500,000.00	\$500,000.00
7/13/2004	CHECK	\$150,000.00	\$150,000.00
9/14/2004	CHECK	\$135,000.00	\$135,000.00
10/1/2004	CHECK	\$460,000.00	\$460,000.00
10/28/2004	CHECK	\$525,000.00	\$525,000.00
11/2/2004	CHECK	\$75,000.00	\$75,000.00
11/8/2004	CHECK	\$550,000.00	\$550,000.00
11/23/2004	CHECK	\$50,000.00	\$50,000.00
12/13/2004	CHECK	\$50,000.00	\$50,000.00
2/11/2005	CHECK	\$150,000.00	\$150,000.00
5/9/2005	CHECK	\$150,000.00	\$150,000.00
5/20/2005	CHECK	\$100,000.00	\$100,000.00
6/14/2005	CHECK	\$1,170,000.00	\$1,170,000.00
6/24/2005	CHECK	\$425,000.00	\$425,000.00
7/20/2005	CHECK	\$50,000.00	\$50,000.00
8/17/2005	CHECK	\$100,000.00	\$100,000.00
8/24/2005	CHECK	\$170,000.00	\$170,000.00
9/26/2005	CHECK	\$150,000.00	\$150,000.00
11/4/2005	CHECK	\$325,000.00	\$325,000.00
12/2/2005	CHECK	\$1,000,000.00	\$1,000,000.00
12/23/2005	CHECK	\$75,000.00	\$75,000.00
1/11/2006	CHECK	\$200,000.00	\$200,000.00
2/6/2006	CHECK	\$450,000.00	\$450,000.00
4/4/2006	CHECK	\$100,000.00	\$100,000.00



5/31/2006	CHECK	\$250,000.00	\$250,000.00
6/19/2006	CHECK	\$250,000.00	\$250,000.00
8/15/2006	CHECK	\$200,000.00	\$200,000.00
9/15/2006	CHECK	\$200,000.00	\$200,000.00
9/20/2006	CHECK	\$350,000.00	\$350,000.00
10/18/2006	CHECK	\$275,000.00	\$275,000.00
12/11/2006	CHECK	\$200,000.00	\$200,000.00
1/12/2007	CHECK	\$185,000.00	\$185,000.00
1/16/2007	CHECK	\$240,000.00	\$240,000.00
1/31/2007	CHECK	\$115,000.00	\$115,000.00
1/31/2007	CHECK	\$550,000.00	\$550,000.00
1/31/2007	CANCEL CHECK	(\$550,000.00)	(\$550,000.00)
1/31/2007	CHECK	\$55,000.00	\$55,000.00
2/14/2007	CHECK	\$100,000.00	\$100,000.00
3/9/2007	CHECK	\$85,000.00	\$85,000.00
4/2/2007	CHECK	\$175,000.00	\$175,000.00
4/13/2007	CHECK	\$600,000.00	\$600,000.00
6/21/2007	CHECK	\$300,000.00	\$300,000.00
8/14/2007	CHECK	\$50,000.00	\$50,000.00
9/10/2007	CHECK	\$125,000.00	\$125,000.00
11/9/2007	CHECK	\$350,000.00	\$350,000.00
1/16/2008	CHECK	\$125,000.00	\$125,000.00
2/8/2008	CHECK	\$100,000.00	\$100,000.00
2/28/2008	CHECK	\$525,000.00	\$525,000.00
4/7/2008	CHECK	\$700,000.00	\$700,000.00
4/25/2008	CHECK	\$750,000.00	\$750,000.00
6/12/2008	CHECK	\$200,000.00	\$200,000.00
6/30/2008	CHECK	\$500,000.00	\$500,000.00
8/22/2008	CHECK	\$300,000.00	\$300,000.00
9/16/2008	CHECK	\$100,000.00	\$100,000.00
9/29/2008	CHECK	\$850,000.00	\$850,000.00
<b>Total Deposits:</b>		<b>\$22,794,075.00</b>	<b>\$19,645,000.00</b>

**WITHDRAWALS**

DATE	TRANSACTION DESCRIPTION	AMOUNT	ADJUSTED AMOUNT
12/24/2002	CHECK	(\$100,000.00)	(\$100,000.00)
9/4/2003	CHECK	(\$800,000.00)	(\$800,000.00)
11/18/2003	CHECK	(\$300,000.00)	(\$300,000.00)
12/17/2003	CHECK	(\$50,000.00)	(\$50,000.00)
1/16/2004	CHECK	(\$860,000.00)	(\$860,000.00)
1/26/2004	CHECK	(\$60,000.00)	(\$60,000.00)
2/26/2004	CHECK	(\$150,000.00)	(\$150,000.00)
3/4/2004	CHECK	(\$25,000.00)	(\$25,000.00)
6/23/2004	CHECK	(\$600,000.00)	(\$600,000.00)
1/26/2005	CHECK	(\$500,000.00)	(\$500,000.00)
2/25/2005	CHECK	(\$65,000.00)	(\$65,000.00)
9/1/2005	CHECK	(\$70,000.00)	(\$70,000.00)

9/7/2005	CHECK	(\$500,000.00)	(\$500,000.00)
1/17/2006	CHECK	(\$4,350,000.00)	(\$4,350,000.00)
7/26/2006	CHECK	(\$200,000.00)	(\$200,000.00)
11/10/2006	CHECK	(\$100,000.00)	(\$100,000.00)
11/21/2006	CHECK	(\$300,000.00)	(\$300,000.00)
12/19/2006	CHECK	(\$450,000.00)	(\$450,000.00)
2/5/2007	CHECK	(\$65,000.00)	(\$65,000.00)
4/9/2007	CHECK	(\$50,000.00)	(\$50,000.00)
5/7/2007	CHECK	(\$100,000.00)	(\$100,000.00)
5/11/2007	CHECK	(\$500,000.00)	(\$500,000.00)
5/21/2007	CHECK	(\$100,000.00)	(\$100,000.00)
6/8/2007	CHECK	(\$250,000.00)	(\$250,000.00)
8/28/2007	CHECK	(\$50,000.00)	(\$50,000.00)
9/26/2007	CHECK	(\$50,000.00)	(\$50,000.00)
11/30/2007	CHECK	(\$300,000.00)	(\$300,000.00)
12/6/2007	CHECK	(\$50,000.00)	(\$50,000.00)
12/17/2007	CHECK	(\$250,000.00)	(\$250,000.00)
12/19/2007	CHECK	(\$100,000.00)	(\$100,000.00)
4/3/2008	CHECK	(\$700,000.00)	(\$700,000.00)
5/14/2008	CHECK	(\$200,000.00)	(\$200,000.00)
5/28/2008	CHECK	(\$125,000.00)	(\$125,000.00)
6/2/2008	CHECK	(\$125,000.00)	(\$125,000.00)
6/2/2008	STOP PAYMENT	\$125,000.00	\$125,000.00
7/30/2008	CHECK	(\$300,000.00)	(\$300,000.00)
8/26/2008	CHECK	(\$325,000.00)	(\$325,000.00)
9/19/2008	CHECK	(\$1,225,000.00)	(\$1,225,000.00)
10/14/2008	CHECK	(\$125,000.00)	(\$125,000.00)
10/29/2008	CHECK	(\$250,000.00)	(\$250,000.00)
10/31/2008	CHECK	(\$1,200,000.00)	(\$1,200,000.00)
11/24/2008	CHECK	(\$400,000.00)	(\$400,000.00)
<b>Total Withdrawals:</b>		(\$16,195,000.00)	(\$16,195,000.00)
<b>Total deposits less withdrawals:</b>		\$6,599,075.00	\$3,450,000.00

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

SECURITIES INVESTOR PROTECTION  
CORPORATION,

Plaintiff-Applicant,

v.

BERNARD L. MADOFF INVESTMENT  
SECURITIES LLC,

Defendant.

Adv. Pro. No. 08-01789-SMB

SIPA Liquidation

**PARTIAL ASSIGNMENT AND RELEASE**

KNOW ALL MEN BY THESE PRESENTS, that FGLS Equity LLC, located at c/o Steve Mendelow, Citrin Cooperman, 529 Fifth Avenue, New York, New York 10017 (hereinafter referred to as the "Assignor") in consideration of the payment of \$500,000.00 to satisfy in part its claim for customer protection (the "Customer Claim", having been designated Claim #011505) filed in the liquidation proceeding of Bernard L. Madoff Investment Securities LLC ("BLMIS") under the Securities Investor Protection Act, 15 U.S.C. §78aaa *et seq.* ("SIPA") (see §§78fff-2(b), 78fff-2(d), and §78fff-3(a)(1) of SIPA), does for itself hereby assign, transfer and set over to Irving H. Picard as SIPA Trustee (the "SIPA Trustee") for the liquidation of BLMIS (see §78fff-2(b) of SIPA), and the Securities Investor Protection Corporation ("SIPC"), as subrogee to the extent of its cash advances to the SIPA Trustee for the satisfaction of the aforementioned Customer Claim (see §78fff-3(a)(1) of SIPA), any and all rights, including causes of action or claims, that Assignor now may have against BLMIS and/or any third party arising out of or relating to any fraudulent or illegal activity with respect to Assignor's BLMIS account (Account No. 1F0178, the "BLMIS Account"), which gave rise to the allowed Customer



Claim for securities filed by Assignor against BLMIS. Such assignment is only to the extent that Assignor has received satisfaction of the Customer Claim as set forth above.

Further, Assignor has not previously compromised or assigned any claim, cause of action or other right against BLMIS, its principals or agents or any third party arising out of or related to any fraudulent or illegal activity giving rise to the Customer Claim.

Upon reasonable request of the SIPA Trustee or SIPC, Assignor agrees to cooperate with the SIPA Trustee or SIPC in connection with any efforts of either to recover from the principals or agents of BLMIS or anyone else for amounts advanced by SIPC or paid by the SIPA Trustee to satisfy in part Assignor's Customer Claim in this SIPA liquidation proceeding. Such efforts to recover by the SIPA Trustee or SIPC, either to demand or pursue or to prosecute or settle any collection effort, action or proceeding therefore, shall be at the sole cost of the SIPA Trustee or SIPC.

Effective immediately and without further action, contingent only upon Assignor's receipt from the SIPA Trustee or his agent of a check in the amount of \$500,000.00 as set forth in the SIPA Trustee's Notice of Determination of the Customer Claim dated October 7, 2015 (the "Trustee's Determination"), and upon receipt by the SIPA Trustee of this executed and notarized Partial Assignment and Release, the Assignor does for itself, and for its executors, administrators, heirs and assigns hereby remise, release and forever discharge the SIPA Trustee and SIPC, as subrogee to the extent of its cash advances for the satisfaction of the Customer Claim, and, as the case may be, their officers, directors, professionals, employees, agents, successors and assigns, of and from any and all claims arising out of or relating to the Assignor's BLMIS Account, the Customer Claim filed with the SIPA Trustee as protected by the provisions of SIPA, and any and all circumstances giving rise to said Customer Claim which the Assignor



now has, or hereafter may have, for or by any reason, cause, matter or thing whatsoever from the beginning of the world to the date of the execution of this Partial Assignment and Release, only to the extent that the SIPA Trustee and/or SIPC has paid monies to the Assignor to satisfy Assignor's Customer Claim.

Assignor acknowledges the sufficiency of the consideration to be received in accordance with the SIPA Trustee's Determination and under this Partial Assignment and Release.

The undersigned acknowledge that they are authorized to execute this Partial Assignment and Release on behalf of FGLS Equity LLC.

**IN WITNESS WHEREOF**, the undersigned have on this day set forth below duly executed this Partial Assignment of Assignor's Customer Claim and Release, intending to be legally bound hereby.

**FGLS EQUITY LLC**

**By: Sands Family Partnership**

By: \_\_\_\_\_  
Franklin Sands

Sworn and subscribed before me this  
\_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
Notary Public

**FGLS EQUITY LLC**

**By: Schupak Group Defined Benefit Plan**

By: \_\_\_\_\_  
Donald Schupak

Sworn and subscribed before me this  
\_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
Notary Public

**FGLS EQUITY LLC**

By: \_\_\_\_\_  
Mark Brown

Sworn and subscribed before me this  
\_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
Notary Public

**FGLS EQUITY LLC**

**By: Sajust LLC**

By: \_\_\_\_\_  
Larry Warshaw

Sworn and subscribed before me this  
\_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
Notary Public

**FGLS EQUITY LLC**

By: \_\_\_\_\_  
Mark Weinberg

Sworn and subscribed before me this  
\_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
Notary Public

**FGLS EQUITY LLC**

**By: Mendelow Family Foundation**

By: \_\_\_\_\_  
Pamela Christian

Sworn and subscribed before me this  
\_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
Notary Public

**FGLS EQUITY LLC**

By: \_\_\_\_\_  
Jonathan Goldner

Sworn and subscribed before me this  
\_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
Notary Public



**FGLS EQUITY LLC**

By: \_\_\_\_\_  
Dina Goldner

Sworn and subscribed before me this  
\_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
Notary Public

**FGLS EQUITY LLC**

By: \_\_\_\_\_  
Peggy Mendelow

Sworn and subscribed before me this  
\_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
Notary Public

**FGLS EQUITY LLC**

By: \_\_\_\_\_  
Jedd Benjamin Levine

Sworn and subscribed before me this  
\_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
Notary Public



**FGLS EQUITY LLC**

**By: The May LLC**

By: \_\_\_\_\_  
Susan Jordan

Sworn and subscribed before me this  
\_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
Notary Public

**FGLS EQUITY LLC**

**By: Carol Ann Enterprises Pension Plan**

By: \_\_\_\_\_  
Larry Warshaw

Sworn and subscribed before me this  
\_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
Notary Public

**FGLS EQUITY LLC**

**By: Robin Silna 1997 Trust**

By: \_\_\_\_\_  
Dan Silna

Sworn and subscribed before me this  
\_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
Notary Public

**FGLS EQUITY LLC**

**By: Jeffrey Silna 1997 Trust**

By: \_\_\_\_\_  
Dan Silna

Sworn and subscribed before me this  
\_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
Notary Public

**FGLS EQUITY LLC**

By: \_\_\_\_\_  
Jon Alexion

Sworn and subscribed before me this  
\_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
Notary Public

**FGLS EQUITY LLC**

By: \_\_\_\_\_  
Steve Turchin

Sworn and subscribed before me this  
\_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
Notary Public

**FGLS EQUITY LLC**

By: \_\_\_\_\_  
Rochelle Kremins

Sworn and subscribed before me this  
\_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
Notary Public

**FGLS EQUITY LLC**

By: \_\_\_\_\_  
Eilhys England

Sworn and subscribed before me this  
\_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
Notary Public

**FGLS EQUITY LLC**

**By: MAJ Partners LLC**

By: \_\_\_\_\_  
Pamela Christian

Sworn and subscribed before me this  
\_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
Notary Public

## **EXHIBIT 2**

Stanley S. Arkin (SA-1373)  
Lisa C. Solbakken  
Alex Reisen  
ARKIN SOLBAKKEN LLP  
750 Lexington Avenue, 25<sup>th</sup> Floor  
New York, New York 10022  
(212) 333-0200  
[sarkin@arkin-law.com](mailto:sarkin@arkin-law.com)  
*Attorneys for FGLS Equity LLC*

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

SECURITIES INVESTOR PROTECTION CORPORATION, : SIPA LIQUIDATION  
Plaintiff : Index No. 08-01789  
(SMB)  
vs. :  
BERNARD L. MADOFF INVESTMENT SECURITIES LLC, et al., : OBJECTION TO  
Defendants, : TRUSTEE'S  
: DETERMINATION OF  
: CLAIM

FGLS Equity LLC (“FGLS”) hereby objects to the Notice of Trustee’s Determination of  
Claim dated October 7, 2015 (the “Determination Letter”) and states as follows:

## BACKGROUND FACTS

1. FGLS holds an account with Bernard L. Madoff Investment Securities LLC ("BLMIS"), bearing BLMIS Account No. 1F0178 (the "Account").
2. According to the Trustee, during the period from November 1, 2002 through November 24, 2008, FGLS deposited a total of \$22,794,075 into the Account and withdrew a total of \$16,195,000 from the Account. However, the Trustee is crediting the Account with

deposits of only \$19,645,000 because the Trustee has assigned no value to a transfer (the “Transfer”) made from another BLMIS account (the “Transferor Account”) in the amount of \$3,149,075.

3. It is important to note that this Transfer was a true arms-length transaction, rather than the mere shuffling of funds among accounts belonging to the same individual or entity.

4. FGLS sent a SIPC claim to the Trustee for the Account asserting a claim for \$12,245,897.63 based upon its final BLMIS statement.

5. In the Determination Letter, the Trustee allowed FGLS’s claim in the amount of \$3,450,000, ignoring the full amount of the Transfer and ignoring all appreciation in the Account. *See Exhibit A* hereto.

6. The Determination Letter attaches a table (“Table 1”) listing each deposit and withdrawal. In relevant part, Table 1 reads as follows:

DEPOSITS			
DATE	TRANSACTION DESCRIPTION	AMOUNT	ADJUSTED AMOUNT
11/1/2002	TRANS FROM 1ZA54230	\$3,149,075.00	\$0.00

*See Exhibit A* at 4.

7. The Determination Letter does not specify the basis for the Trustee’s decision not to credit the Account with the \$3,149,075 Transfer from the Transferor Account. In particular, the Determination Letter does not allege that the Transferor Account consisted only of fictitious profits or that there was no actual net investment in the Transferor Account sufficient to cover the Transfer.

#### GROUND FOR OBJECTION

8. The Trustee has failed to state a basis in the Determination Letter for the position it has taken. Thus, the Trustee has not complied with the requirement that an



objection to a claim should . . . meet the [pleading] standards of an answer. It should make clear which facts are disputed; it should allege facts necessary to affirmative defenses; and it should describe the theoretical bases of those defenses.

Collier on Bankruptcy ¶ 3007.01(3) (15th ed.); *In re Enron Corp.*, No. 01-16034, 2003 Bankr.

LEXIS 2261, at \*25 (S.D.N.Y. Jan. 13, 2003).

9. In particular, last year this Court issued a decision approving the Trustee's so-called "Inter-Account Method" for the treatment of transfers from one BLMIS customer account to another BLMIS customer account. *See SIPC v. BLMIS LLC*, 522 B.R. 41, 62 (Bankr. S.D.N.Y. 2014) (the "Inter-Account Method Decision"). In this decision, the Court made clear that (i) the Trustee first uses the Net Investment Method to determine the actual net investment in the Transferor Account (excluding fictitious profits), and (ii) then credits the transferee account (in this case, FGLS's account) with a transfer in that amount. *See id.* at 47-48.

10. For example, if the Transferor Account had an account balance of \$10 million, computed under the Net Investment Method, this would be enough to cover the entire \$3,149,075 transfer, and FGLS's account would be credited with the full \$3,149,075. If, on the other hand, the Transferor Account had an account balance of only \$2 million computed under the Net Investment Method, then FGLS's account would receive credit for only \$2 million.

11. However, the Determination Letter does not specify – or even mention – the account balance of the Transferor Account, and nowhere alleges that it contained entirely of fictitious profits or provides any other basis for assigning zero value to the Transfer. The Determination Letter thus fails to allege the basis for disallowing, in its entirety, this portion of FGLS's claims.



12. To the extent the Transferor Account contained some net investment amount, then the FGLS Account should be credited with a transfer in that amount. *Inter-Account Method Decision*, 522 B.R. at 47-48.

13. FGLS also adopts and incorporates the same arguments raised by the “Objecting Claimants” in their objections to the motion underlying the Inter-Account Method Decision. *See Inter-Account Method Decision*, 522 B.R. at 53-62 (describing and rejecting arguments). While FGLS recognizes that this Court has considered and rejected these arguments, FGLS respectfully adopts those arguments for purposes of preserving its rights on appeal.

14. For example – among other things – the Determination Letter fails to comply with the Court order dated December 23, 2008, which directs the Trustee to satisfy customer claims and to deliver securities in accordance with “the Debtor’s books and records” – as BLMIS’s customer account statements are reflective of “the Debtor’s books and records” by which the Trustee is bound, absent proof that FGLS did not have a “legitimate expectation” that the balance on the Account statement represented its property.

15. Further, application of the Inter-Account Method to a transfer occurring more than two years prior to the BLMIS SIPA liquidation proceeding violates the statutory two-year reach-back period for fraudulent transfers set forth in Bankruptcy Code § 548(a)(1)(A).

16. The Inter-Account Method also prioritizes form over substance, as it treats economically identical transactions differently – penalizing customers who received funds by direct inter-account transfers, but not customers who received the same funds by way of a separate withdrawal and deposit.

17. These arguments, and other arguments previously raised by the “Objecting Claimants” (as set forth in the *Inter-Account Method Decision*), are hereby incorporated into this Opposition for purposes of preserving FGLS’s rights.

18. For these reasons, FGLS respectfully submits that it is entitled to an order compelling the Trustee and SIPC to have its claim recognized in the amount of \$12,245,897.63, consistent with its final statements.

19. Further, as the Trustee was indisputably aware of its obligation to “make clear which facts are disputed” and to “allege facts necessary to [its position],” but nonetheless wholly declined to do so, FGLS respectfully requests that this Court dismiss the Trustee’s objection without leave to amend.

Dated: New York, New York  
November 5, 2015

ARKIN SOLBAKKEN LLP

By: /s/ Stanley S. Arkin  
Stanley S. Arkin (SA-1373)  
Lisa C. Solbakken  
Alex Reisen  
Arkin Solbakken LLP  
750 Lexington Avenue – 25th Floor  
New York, New York 10022  
(212) 333-0200  
*Attorneys for FGLS Equity LLC*

# EXHIBIT A



BERNARD L. MADOFF INVESTMENT SECURITIES LLC

In Liquidation

DECEMBER 11, 2008<sup>1</sup>

NOTICE OF TRUSTEE'S DETERMINATION OF CLAIM

October 7, 2015

FGLS Equity LLC  
c/o Steve Mendelow  
Citrin Cooperman  
529 Fifth Avenue  
New York, New York 10017

Dear FGLS Equity LLC:

**PLEASE READ THIS NOTICE CAREFULLY.**

The liquidation of the business of BERNARD L. MADOFF INVESTMENT SECURITIES LLC ("BLMIS") is being conducted by Irving H. Picard, Trustee under the Securities Investor Protection Act, 15 U.S.C. § 78aaa et seq. ("SIPA"), pursuant to an order entered on December 15, 2008 by the United States District Court for the Southern District of New York.

The Trustee has made the following determination regarding your claim on BLMIS Account No. 1F0178, designated as Claim No. 011505:

Your claim for securities is **DENIED**. No securities were ever purchased for your account.

Your claim is **ALLOWED** for \$3,450,000.00 which was the balance in your BLMIS Account on the Filing Date based on the amount of money you deposited with BLMIS for the purchase of securities, less subsequent withdrawals, as outlined in Table 1 attached hereto.

Your **ALLOWED CLAIM** of \$3,450,000.00 will be satisfied in the following manner:

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<sup>1</sup> Section 78lll(7)(B) of SIPA states that the filing date is "the date on which an application for a protective decree is filed under 78eee(a)(3)," except where the debtor is the subject of a proceeding pending before a United States court "in which a receiver, trustee, or liquidator for such debtor has been appointed and such proceeding was commenced before the date on which such application was filed, the term 'filing date' means the date on which such proceeding was commenced." Section 78lll(7)(B). Thus, even though the Application for a protective decree was filed on December 15, 2008, the Filing Date in this action is on December 11, 2008.

REBUTTED TO THE VIEWS OF THE COUNSEL FOR THE DEFENDANT, THE DEFENDANT'S ATTORNEY, IN HIS BRIEF IN SUPPORT OF THE DEFENDANT'S MOTION FOR A JUDGMENT OF ACQUITTAL, STATED THAT THE DEFENDANT WAS NOT PREPARED TO TESTIFY.

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The enclosed **PARTIAL ASSIGNMENT AND RELEASE** must be executed, notarized and returned in the envelope provided herewith. Upon receipt of the executed and notarized **PARTIAL ASSIGNMENT AND RELEASE**, the Trustee will partially satisfy your **ALLOWED CLAIM** by sending you a check in the amount of \$500,000.00, with the funds being advanced by Securities Investor Protection Corporation pursuant to section 78fff-3(a)(1) of SIPA. At this time, you are entitled to \$1,683,669.00 (based on 48.802% of your allowed claim) for catch-up distributions the Trustee previously has made. You will also be entitled to additional distributions, if any are made by the Trustee.

**PLEASE TAKE NOTICE:** You did not previously receive a determination letter because your claim was temporarily disallowed pursuant to Bankruptcy Code Section 502(d) in connection with an adversary proceeding pending against you. As a result of the dismissal of the adversary proceeding against you, your claim is now being determined pursuant to this Notice of Trustee's Determination of Claim.

**PLEASE TAKE NOTICE:** If you disagree with this determination and desire a hearing before Bankruptcy Judge Stuart M. Bernstein, you MUST file your written opposition, setting forth the grounds for your disagreement, referencing Bankruptcy Case No. 08-1789 (SMB) and attaching copies of any documents in support of your position, with the United States Bankruptcy Court and the Trustee within **THIRTY DAYS** after October 7, 2015, the date on which the Trustee mailed this notice.

**PLEASE TAKE FURTHER NOTICE:** If you do not properly and timely file a written opposition, the Trustee's determination with respect to your claim will be deemed confirmed by the Court and binding on you.

**PLEASE TAKE FURTHER NOTICE:** If you properly and timely file a written opposition, a hearing date for this controversy will be obtained by the Trustee and you will be notified of that hearing date. Your failure to appear personally or through counsel at such hearing will result in the Trustee's determination with respect to your claim being confirmed by the Court and binding on you.

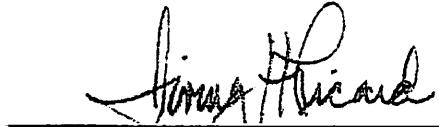
please withdraw your name. I should consider such an action as a personal slight, and I would be compelled to do the same. I have the same right to withdraw my name as you have to withdraw yours. I have the same right to withdraw my name as you have to withdraw yours.

**PLEASE TAKE FURTHER NOTICE:** You must mail your opposition, if any, in accordance with the above procedure, to each of the following addresses:

Clerk of the United States Bankruptcy Court for  
the Southern District of New York  
One Bowling Green  
New York, New York 10004

and

Irving H. Picard, Trustee  
c/o Baker & Hostetler LLP  
45 Rockefeller Plaza  
New York, New York 10111



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Irving H. Picard

Trustee for the Liquidation of the Business of  
Bernard L. Madoff Investment Securities LLC

cc: Arkin Solbakken LLP  
750 Lexington Avenue  
25<sup>th</sup> Floor  
New York, New York 10022  
Attention: Lisa Solbakken, Esq.  
Stanley Arkin, Esq.  
Alex Reisen, Esq.

Marc Bogatin, Esq.  
Attorney at Law  
277 Broadway, Suite 900  
New York, New York 10007



DATE	TRANSACTION DESCRIPTION	AMOUNT	ADJUSTED AMOUNT
11/1/2002	TRANS FROM 1ZA54230	\$3,149,075.00	\$0.00
1/3/2003	CHECK	\$95,000.00	\$95,000.00
3/6/2003	CHECK	\$300,000.00	\$300,000.00
4/9/2003	CHECK	\$40,000.00	\$40,000.00
4/23/2003	CHECK	\$40,000.00	\$40,000.00
5/9/2003	CHECK	\$20,000.00	\$20,000.00
6/5/2003	CHECK	\$90,000.00	\$90,000.00
6/10/2003	CHECK	\$200,000.00	\$200,000.00
7/21/2003	CHECK	\$500,000.00	\$500,000.00
7/31/2003	CHECK	\$300,000.00	\$300,000.00
8/12/2003	CHECK	\$185,000.00	\$185,000.00
9/12/2003	CHECK	\$500,000.00	\$500,000.00
9/23/2003	CHECK	\$525,000.00	\$525,000.00
10/14/2003	CHECK	\$170,000.00	\$170,000.00
11/6/2003	CHECK	\$200,000.00	\$200,000.00
11/26/2003	CHECK	\$615,000.00	\$615,000.00
12/5/2003	CHECK	\$270,000.00	\$270,000.00
3/29/2004	CHECK	\$230,000.00	\$230,000.00
4/21/2004	CHECK	\$500,000.00	\$500,000.00
7/13/2004	CHECK	\$150,000.00	\$150,000.00
9/14/2004	CHECK	\$135,000.00	\$135,000.00
10/1/2004	CHECK	\$460,000.00	\$460,000.00
10/28/2004	CHECK	\$525,000.00	\$525,000.00
11/2/2004	CHECK	\$75,000.00	\$75,000.00
11/8/2004	CHECK	\$550,000.00	\$550,000.00
11/23/2004	CHECK	\$50,000.00	\$50,000.00
12/13/2004	CHECK	\$50,000.00	\$50,000.00
2/11/2005	CHECK	\$150,000.00	\$150,000.00
5/9/2005	CHECK	\$150,000.00	\$150,000.00
5/20/2005	CHECK	\$100,000.00	\$100,000.00
6/14/2005	CHECK	\$1,170,000.00	\$1,170,000.00
6/24/2005	CHECK	\$425,000.00	\$425,000.00
7/20/2005	CHECK	\$50,000.00	\$50,000.00
8/17/2005	CHECK	\$100,000.00	\$100,000.00
8/24/2005	CHECK	\$170,000.00	\$170,000.00
9/26/2005	CHECK	\$150,000.00	\$150,000.00
11/4/2005	CHECK	\$325,000.00	\$325,000.00
12/2/2005	CHECK	\$1,000,000.00	\$1,000,000.00
12/23/2005	CHECK	\$75,000.00	\$75,000.00
1/11/2006	CHECK	\$200,000.00	\$200,000.00
2/6/2006	CHECK	\$450,000.00	\$450,000.00
4/4/2006	CHECK	\$100,000.00	\$100,000.00



5/31/2006	CHECK	\$250,000.00	\$250,000.00
6/19/2006	CHECK	\$250,000.00	\$250,000.00
8/15/2006	CHECK	\$200,000.00	\$200,000.00
9/15/2006	CHECK	\$200,000.00	\$200,000.00
9/20/2006	CHECK	\$350,000.00	\$350,000.00
10/18/2006	CHECK	\$275,000.00	\$275,000.00
12/11/2006	CHECK	\$200,000.00	\$200,000.00
1/12/2007	CHECK	\$185,000.00	\$185,000.00
1/16/2007	CHECK	\$240,000.00	\$240,000.00
1/31/2007	CHECK	\$115,000.00	\$115,000.00
1/31/2007	CHECK	\$550,000.00	\$550,000.00
1/31/2007	CANCEL CHECK	(\$550,000.00)	(\$550,000.00)
1/31/2007	CHECK	\$55,000.00	\$55,000.00
2/14/2007	CHECK	\$100,000.00	\$100,000.00
3/9/2007	CHECK	\$85,000.00	\$85,000.00
4/2/2007	CHECK	\$175,000.00	\$175,000.00
4/13/2007	CHECK	\$600,000.00	\$600,000.00
6/21/2007	CHECK	\$300,000.00	\$300,000.00
8/14/2007	CHECK	\$50,000.00	\$50,000.00
9/10/2007	CHECK	\$125,000.00	\$125,000.00
11/9/2007	CHECK	\$350,000.00	\$350,000.00
1/16/2008	CHECK	\$125,000.00	\$125,000.00
2/8/2008	CHECK	\$100,000.00	\$100,000.00
2/28/2008	CHECK	\$525,000.00	\$525,000.00
4/7/2008	CHECK	\$700,000.00	\$700,000.00
4/25/2008	CHECK	\$750,000.00	\$750,000.00
6/12/2008	CHECK	\$200,000.00	\$200,000.00
6/30/2008	CHECK	\$500,000.00	\$500,000.00
8/22/2008	CHECK	\$300,000.00	\$300,000.00
9/16/2008	CHECK	\$100,000.00	\$100,000.00
9/29/2008	CHECK	\$850,000.00	\$850,000.00
<b>Total Deposits:</b>		<b>\$22,794,075.00</b>	<b>\$19,645,000.00</b>

DATE	TRANSACTION DESCRIPTION	AMOUNT	ADJUSTED AMOUNT
12/24/2002	CHECK	(\$100,000.00)	(\$100,000.00)
9/4/2003	CHECK	(\$800,000.00)	(\$800,000.00)
11/18/2003	CHECK	(\$300,000.00)	(\$300,000.00)
12/17/2003	CHECK	(\$50,000.00)	(\$50,000.00)
1/16/2004	CHECK	(\$860,000.00)	(\$860,000.00)
1/26/2004	CHECK	(\$60,000.00)	(\$60,000.00)
2/26/2004	CHECK	(\$150,000.00)	(\$150,000.00)
3/4/2004	CHECK	(\$25,000.00)	(\$25,000.00)
6/23/2004	CHECK	(\$600,000.00)	(\$600,000.00)
1/26/2005	CHECK	(\$500,000.00)	(\$500,000.00)
2/25/2005	CHECK	(\$65,000.00)	(\$65,000.00)
9/1/2005	CHECK	(\$70,000.00)	(\$70,000.00)



9/7/2005	CHECK	(\$500,000.00)	(\$500,000.00)
1/17/2006	CHECK	(\$4,350,000.00)	(\$4,350,000.00)
7/26/2006	CHECK	(\$200,000.00)	(\$200,000.00)
11/10/2006	CHECK	(\$100,000.00)	(\$100,000.00)
11/21/2006	CHECK	(\$300,000.00)	(\$300,000.00)
12/19/2006	CHECK	(\$450,000.00)	(\$450,000.00)
2/5/2007	CHECK	(\$65,000.00)	(\$65,000.00)
4/9/2007	CHECK	(\$50,000.00)	(\$50,000.00)
5/7/2007	CHECK	(\$100,000.00)	(\$100,000.00)
5/11/2007	CHECK	(\$500,000.00)	(\$500,000.00)
5/21/2007	CHECK	(\$100,000.00)	(\$100,000.00)
6/8/2007	CHECK	(\$250,000.00)	(\$250,000.00)
8/28/2007	CHECK	(\$50,000.00)	(\$50,000.00)
9/26/2007	CHECK	(\$50,000.00)	(\$50,000.00)
11/30/2007	CHECK	(\$300,000.00)	(\$300,000.00)
12/6/2007	CHECK	(\$50,000.00)	(\$50,000.00)
12/17/2007	CHECK	(\$250,000.00)	(\$250,000.00)
12/19/2007	CHECK	(\$100,000.00)	(\$100,000.00)
4/3/2008	CHECK	(\$700,000.00)	(\$700,000.00)
5/14/2008	CHECK	(\$200,000.00)	(\$200,000.00)
5/28/2008	CHECK	(\$125,000.00)	(\$125,000.00)
6/2/2008	CHECK	(\$125,000.00)	(\$125,000.00)
6/2/2008	STOP PAYMENT	\$125,000.00	\$125,000.00
7/30/2008	CHECK	(\$300,000.00)	(\$300,000.00)
8/26/2008	CHECK	(\$325,000.00)	(\$325,000.00)
9/19/2008	CHECK	(\$1,225,000.00)	(\$1,225,000.00)
10/14/2008	CHECK	(\$125,000.00)	(\$125,000.00)
10/29/2008	CHECK	(\$250,000.00)	(\$250,000.00)
10/31/2008	CHECK	(\$1,200,000.00)	(\$1,200,000.00)
11/24/2008	CHECK	(\$400,000.00)	(\$400,000.00)
<b>Total Withdrawals:</b>		<b>(\$16,195,000.00)</b>	<b>(\$16,195,000.00)</b>
<b>Total deposits less withdrawals:</b>		<b>\$6,599,075.00</b>	<b>\$3,450,000.00</b>

